

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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|---------------------------|---|------------------|
| UNITED STATES OF AMERICA, | § | |
| | § | |
| Plaintiff, | § | CIVIL ACTION NO. |
| | § | |
| v. | § | |
| | § | COMPLAINT |
| SHINTECH INCORPORATED and | § | |
| K-BIN INC, | § | |
| | § | |
| | § | |
| Defendants | § | |

The United States of America, by the Authority of the Attorney General of the United States and through its undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

INTRODUCTION

1. This is a civil action brought pursuant to Section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(b); Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a); Sections 301 and 402 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1311 and 1342; and Section 325(c)(4) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(c)(4), for the assessment of civil penalties and injunctive relief against Shintech Incorporated ("Shintech") and/or K-Bin, Inc., ("K-BIN") for violations of the CAA, RCRA, CWA and EPCRA (collectively "the Acts") and the regulations promulgated thereunder.

2. The authority to bring this action is vested in the United States Department of

Justice. See e.g. 28 U.S.C. §§ 516 and 519 and 42 U.S.C. § 7605.

3. During the months of July and August 2004, EPA, Region 6, conducted a Multi-media Compliance Evaluation Inspection (“Inspection”) at the Shintech Facility in Freeport, Texas; and on August 8, 2006, EPA issued an information request (“Request”) pursuant to Section 114 of the CAA, 42 U.S.C. § 7414. Shintech provided EPA with a response to the Request on or about September 29, 2006. The Inspection, response, and EPA’s review of Shintech’s submittals, prior to the date of filing, form the basis for this Complaint.

NOTICE

4. Notice of the commencement of this action has been given to the State of Texas, under Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2); and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

JURISDICTION

5. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1); Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d); Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4); and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355. The Court has jurisdiction over the parties to this action.

VENUE

6. Venue is proper in this Judicial District, pursuant to Sections 28 U.S.C. §§ 1391(b) and (c), and 1395(a); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1); Section 309(b) of the CWA, 33 U.S.C. § 1319(b); and Section

325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4); as it is the judicial district where the violations occurred as well as where the Defendants can be found.

PARTIES

7. Plaintiff is the United States of America acting on behalf of the Administrator of EPA ("Administrator").

8. Defendants are Shintech Incorporated ("Shintech") and K-Bin, Inc., ("K-BIN"). Shintech is incorporated in the State of Delaware and has its corporate headquarters in the State of Texas. K-BIN is incorporated in Delaware and began operating in Texas on May 12, 1986.

9. K-BIN is a wholly owned subsidiary of Shintech.

10. Shintech owns and operates a facility that consists of (3) three plants that produce polyvinyl chloride ("PVC").

11. K-BIN owns and operates a facility that is described as a rigid custom compounder of PVC resin.

12. The Shintech and K-BIN facilities are both located at 5618 Highway 332 East in Freeport, Texas.

13. Shintech and K-BIN are "persons" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e); Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); Section 502(5) of the CWA, 33 U.S.C. § 1362(5); Section 329(7) of EPCRA, 42 U.S.C. § 11049(7); 40 C.F.R. § 260.10; and 30 TEX.ADMIN.CODE § 335.1.

STATUTORY AND REGULATORY BACKGROUND AND GENERAL ALLEGATIONS UNDER THE CLEAN AIR ACT

14. In accordance with Title VI of the CAA, 42 U.S.C. §§ 7671 *et seq.*, EPA promulgated at 40 C.F.R. Part 82, Subpart F, regulations to reduce emissions of Class I and Class II

refrigerants and their substitutes to the lowest achievable level by maximizing the recapture and recycling of such refrigerants. 40 C.F.R. § 82.150(a).

15. Pursuant to 40 C.F.R. § 82.150(b), Subpart F applies to any person servicing, maintaining, or repairing appliances; to refrigerant reclaimers; and to appliance owners and operators.

16. At its Freeport facility, Shintech has two pieces of equipment that recover and recycle chlorofluorocarbon ("CFC"). Additionally, Shintech and K-BIN are persons servicing, maintaining, or repairing appliances and/or are refrigerant reclaimers, and are appliance owners and operators. Defendants are therefore subject to the requirements of 40 C.F.R. Part 82, Subpart F.

17. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes penalties of up to \$25,000 per day. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. No. 101-410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Pub. L. No. 104-134, § 31001(s), 110 Stat. 1321-373), the maximum civil penalty per day for each such violation occurring after January 30, 1997, but before March 16, 2004, has been increased to \$27,500, and the maximum civil penalty per day for each such violation occurring on or after March 16, 2004 has been increased to \$32,500. 40 C.F.R. §§ 19.1-19.4.

**STATUTORY AND REGULATORY BACKGROUND AND
GENERAL ALLEGATIONS UNDER THE RESOURCE CONSERVATION AND
RECOVERY ACT**

18. RCRA, 42 U.S.C. §§ 6901 *et seq.*, was enacted on October 21, 1976, and establishes a comprehensive program to be administered by the Administrator of EPA for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste.

19. Pursuant to its authority under RCRA, EPA has promulgated regulations at

40 C.F.R. Parts 260 through 272 applicable to generators, transporters, and treatment, storage, and disposal facilities. These regulations generally prohibit treatment, storage, and disposal of hazardous waste without a permit or equivalent "interim status." They prohibit land disposal of certain hazardous wastes, and provide detailed requirements governing the activities of those who generate hazardous waste and those who are lawfully permitted to store, treat, and dispose of hazardous waste.

20. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271, the EPA may authorize a state to administer a State hazardous waste program in lieu of the federal program when it deems the state program to be, inter alia, equivalent to the federal program.

21. On January 24, 1985, effective February 7, 1985, the State of Texas received final authorization for its base RCRA program, 50 Fed. Reg. 3348 (Jan. 24, 1985), and there have been subsequent authorized revisions to said base program. With the addition of Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), new requirements imposed pursuant to the authority of Hazardous and Solid Waste Amendments of 1984 are immediately applicable in the authorized States upon the federal effective date. The Texas Commission on Environmental Quality ("TCEQ") is the State agency designated to carry out the authorized RCRA program in Texas.

22. Specifically, the federal hazardous waste program is managed in the State of Texas pursuant to the Texas Environmental Quality Act and the rules and regulations promulgated thereunder. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA can take an enforcement action against a person who violates the hazardous waste regulations of an authorized State.

23. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes penalties of up to

\$25,000 per day. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. No. 101-410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Pub. L. No. 104-134, § 31001(s), 110 Stat. 1321-373), the maximum civil penalty per day for each such violation occurring after January 30, 1997, but before March 16, 2004, has been increased to \$27,500, and the maximum civil penalty per day for each such violation occurring on or after March 16, 2004 has been increased to \$32,500. 40 C.F.R. §§ 19.1-19.4.

**STATUTORY AND REGULATORY BACKGROUND AND
GENERAL ALLEGATIONS UNDER THE CLEAN WATER ACT**

24. Section 301(a) of the CWA, 33 U.S.C. § 1311(a) prohibits the “discharge of pollutants” except in compliance with certain sections of the CWA, including Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342.

25. The term “discharge of pollutant” is defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to mean “any addition of any pollutant to navigable waters from any point source....”

26. The term “navigable waters” is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), to mean “the waters of the United States, including the territorial seas.”

27. The term “point source” is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to mean “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel...from which pollutant are or may be discharged.”

28. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the EPA may issue National Pollutant Discharge Elimination Systems (“NPDES”) permits that authorize the discharge of any pollutant into navigable waters, but only in compliance with Section 301 of the CWA, 33 U.S.C.

§ 1311, and such other conditions that EPA determines necessary to carry out the provisions of the CWA.

29. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that a State may establish its own permit program and, after receiving approval of its program by the EPA, may issue NPDES permits. The State of Texas established its own NPDES permit program and received EPA approval of its program on September 14, 1998. 63 Fed. Reg. 51,163 (Sept. 24, 1998).

30. During the relevant time period, Shintech discharged via outfalls 001, 004, 006, 002, 003, 005, 007, and 008 into the San Jacinto Brazos Coastal Basin.

31. Each of these Outfalls, 001, 004, 006, 002, 003, 005, 007, and 008, is a “point source” as that term is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

32. Shintech’s effluent, which contains treated process wastewater, domestic wastewater, utility wastewater, steam condensate, leachate, and storm water, contains “pollutants” as that term is defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

33. The water into which Shintech’s outfalls discharge are “navigable waters” as that term is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

34. Shintech is a “person” as that term is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and during the relevant time period, Shintech’s Freeport facility was subjected to the requirements of the Sections 302 and 402 of the CWA, 33 U.S.C. §§ 1312 and 1342.

35. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes commencement of a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of Sections 301, 302, 306, 307, 308, 318, or 405 of the CWA, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1328, and 1345, or is in violation of any permit condition or limitation implementing any

of those Sections in a permit under Section 402 of the CWA, 33 U.S.C. § 1342.

36. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates CWA shall be subject to civil penalty not to exceed \$25,000 per day for each violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. No. 101-410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Pub. L. No. 104-134, § 31001(s), 110 Stat. 1321-373), the maximum civil penalty per day for each such violation occurring after January 30, 1997, but before March 16, 2004, has been increased to \$27,500, and the maximum civil penalty per day for each such violation occurring on or after March 16, 2004 has been increased to \$32,500. 40 C.F.R. §§ 19.1-19.4.

**STATUTORY AND REGULATORY BACKGROUND AND
GENERAL ALLEGATIONS UNDER THE EMERGENCY PLANNING AND COMMUNITY
RIGHT-TO-KNOW ACT**

37. Under Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder, Shintech is required annually to calculate and report to EPA various data regarding toxic chemicals at the facility during the preceding year. Such data must include the “annual quantity of the toxic chemicals entering each environmental medium.”

38. Section 329(4) of EPCRA, 42 U.S.C. § 11029(4), and 40 C.F.R. § 372.3 define “facility” to mean, in relevant part, all buildings, equipment, structures and other stationary items that are located on a single site and that are owned or operated by the same person.

39. At its Freeport location, Shintech owns and operates a “facility” under the meaning of Section 329(4) of EPCRA, 42 U.S.C. § 11029(4), and 40 C.F.R. § 372.

40. Shintech is required to report pursuant to Section 313 of EPCRA, 42 U.S.C. § 11023, regarding chlorine at its Freeport facility.

41. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes penalties of up to \$25,000 per day. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. No. 101-410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Pub. L. No. 104-134, § 31001(s), 110 Stat. 1321-373), the maximum civil penalty per day for each such violation occurring after January 30, 1997, but before March 16, 2004, has been increased to \$27,500, and the maximum civil penalty per day for each such violation occurring on or after March 16, 2004 has been increased to \$32,500. 40 C.F.R. §§ 19.1-19.4.

CLAIMS FOR RELIEF

Claim I - Clean Air Act

Shintech - Failure to Provide Certification for its CFC Equipment

42. Paragraphs 1 through 17 of the Complaint are incorporated herein by reference as if fully set forth herein.

43. Pursuant to 40 C.F.R. § 82.162(a), Shintech must certify to the Administrator that the recovery or recycling equipment it has acquired is certified and that it is in compliance with the applicable requirements of 40 C.F.R. Part 82, Subpart F.

44. Shintech failed to provide the Administrator with the required certification for its CFC recovery and recycling equipment in 2001 in violation of 40 C.F.R. § 82.162 and the CAA.

45. Pursuant to 113(b) of the CAA, 42 U.S.C. § 7613(b), and 40 C.F.R. § 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the CAA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CAA occurring on and after March 16, 2004.

Claim II - Clean Air Act

Shintech - Failure to Make Repairs to Keep Its Leak Rate Below the Annualized Rate of 35%

46. Paragraphs 1 through 17 of the Complaint are incorporated herein by reference as if fully set forth herein.

47. Pursuant to 40 C.F.R. § 82.156(i)(2), the owners or operators of industrial process refrigeration equipment normally containing more than 50 pounds of refrigerant must have leaks repaired if the appliance is leaking at a rate such that the loss of refrigerant will exceed 35 percent of the total charge in a twelve-month period. The repairs must bring the annual leak rates below 35 percent during a twelve-month period.

48. Between July 2001 and January 2006, Shintech failed to repair its leaking industrial process refrigeration equipment on at least forty-one (41) occasions in violation of 40 C.F.R. § 82.156(i)(2).

49. Pursuant to 113(b) of the CAA, 42 U.S.C. § 7613(b), and 40 C.F.R. § 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the CAA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CAA occurring on and after March 16, 2004.

Claim III - Clean Air Act

Shintech - Failure to Conduct Initial Verification Test

50 Paragraphs 1 through 17 of the Complaint are incorporated herein by reference as if fully set forth herein.

51. Pursuant to 40 C.F.R. § 82.156(i)(3), when repairs have been conducted by the owners and operators of industrial process refrigeration equipment without a process shutdown or system mothballing, an initial verification test shall be conducted at the conclusion of the repairs.

52. Between July 2001 and January 2006, Shintech failed to perform initial verification tests on its leaking industrial refrigeration equipment on at least forty-two (42) occasions in violation of 40 C.F.R. § 82.156(i)(3).

53. Pursuant to 113(b) of the CAA, 42 U.S.C. § 7613(b), and 40 C.F.R. § 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the CAA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CAA occurring on and after March 16, 2004.

Claim IV - Clean Air Act
Shintech - Failure to Conduct Follow-up Verification Test

54. Paragraphs 1 through 17 of the Complaint are incorporated herein by reference as if fully set forth herein.

55. Pursuant to 40 C.F.R. § 82.156(i)(3), when repairs have been conducted by the owners and operators of industrial process refrigeration equipment without a process shutdown or system mothballing, an initial verification test shall be conducted at the conclusion of the repair efforts and a follow-up verification test shall be conducted within 30 days after the initial follow-up verification test.

56. Between July 2001 and January 2006, Shintech failed to perform the follow-up verification test on its leaking industrial process refrigeration equipment on at least thirty-five (35) occasions in violation of 40 C.F.R. § 82.156(i)(3).

57. Pursuant to 113(b) of the CAA, 42 U.S.C. § 7613(b), and 40 C.F.R. § 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the CAA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CAA occurring on and after March 16, 2004.

Claim V - Clean Air Act
Shintech - Failure to Develop a Retrofit/Retirement Plan

58. Paragraph 1 through 17 of the Complaint are incorporated herein by reference as if fully set forth herein.

59. Pursuant to 40 C.F.R. § 82.156(i)(6), owners or operators are not required to repair the leaks if within thirty (30) days of discovering the exceedance of the applicable leak rate or within 30 days of a failed follow-up verification test they develop a one-year retrofit or retirement plan for the leaking appliance.

60. Between July 2001 and January 2006, Shintech failed to develop a retrofit or retirement plan on at least eight (8) occasions in violation of 40 C.F.R. § 82.156(i)(6).

61. Pursuant to 113(b) of the CAA, 42 U.S.C. § 7613(b), and 40 C.F.R. § 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the CAA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CAA occurring on and after March 16, 2004.

Claim VI - Clean Air Act
Shintech - Failure to Retrofit or Retire Leaking Appliances

62. Paragraph 1 through 17 of the Complaint are incorporated herein by reference as if fully set forth herein.

63. Pursuant to 40 C.F.R. § 82.156(i)(6), owners or operators are not required to repair the leaks if within 30 days of discovering the exceedance of the applicable leak rate or within 30 days of a failed follow-up verification test they develop a one-year retrofit or retirement plan for the leaking appliance. The plan must be dated and all work under the plan must be completed within one year of the plan's date.

64. Between July 2001 and January 2006, Shintech failed to implement and complete all work under a retrofit or retirement plan to address its appliances that exceeded the applicable leak rate on at least eight (8) occasions in violation of 40 C.F.R. § 82.156(i)(6).

65. Pursuant to 113(b) of the CAA, 42 U.S.C. § 7613(b), and 40 C.F.R. § 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the CAA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CAA occurring on and after March 16, 2004.

Claim VII- Clean Air Act
Shintech - Failure to Keep Servicing Records

66. Paragraph 1 through 17 of the Complaint are incorporated herein by reference as if fully set forth herein.

67. Pursuant to 40 C.F.R. §§ 82.166(k) and (m), the owners or operators of appliances normally containing more than 50 pounds of refrigerant must keep servicing records documenting the date and type of service, as well as the quantity of refrigerant added. All records required to be maintained must be kept for a minimum of three years.

68. Between July 2001 and January 2006, Shintech failed to keep its service records documenting the date and type of service, as well as the quantity of refrigerant added on at least nine (9) occasions in violation of 40 C.F.R. §§ 82.166(k) and (m).

69. Pursuant to 113(b) of the CAA, 42 U.S.C. § 7613(b), and 40 C.F.R. § 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the CAA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CAA occurring on and after March 16, 2004

Claim VIII - Clean Air Act

K-BIN - Failure to Make Repairs to Keep Its Leak Rate Below the Annualized Rate of 35%

70. Paragraphs 1 through 17 of the Complaint are incorporated herein by reference as if fully set forth herein.

71. Pursuant to 40 C.F.R. § 82.156(i)(2), the owners or operators of industrial process refrigeration equipment normally containing more than 50 pounds of refrigerant must have leaks repaired if the appliance is leaking at a rate such that the loss of refrigerant will exceed 35 percent of the total charge in a twelve-month period. The repairs must bring the annual leak rates to below 35 percent during a twelve-month period.

72. Between July 2001 and January 2006, K-BIN failed to repair its leaking industrial process refrigeration equipment on at least six (6) occasions in violation of 40 C.F.R. § 82.156(i)(2).

73. Pursuant to 113(b) of the CAA, 42 U.S.C. § 7613(b), and 40 C.F.R. § 19.4 (table), K-BIN is liable for a civil penalty of up to \$27,500 for each violation of CAA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CAA occurring on and after March 16, 2004.

Claim IX - Clean Air Act

K-BIN - Failure to Conduct Initial Verification Test

74. Paragraphs 1 through 17 of the Complaint are incorporated herein by reference as if fully set forth herein.

75. Pursuant to 40 C.F.R. § 82.156(i)(3), when repairs have been conducted by the owners and operators of industrial process refrigeration equipment without a process shutdown or system mothballing, an initial verification test shall be conducted at the conclusion of the repairs.

76. Between July 2001 and January 2006, K-BIN failed to perform initial verification tests

on its leaking industrial process refrigeration equipment on at least five (5) occasions in violation of 40 C.F.R. § 82.156(i)(3).

77. Pursuant to 113(b) of the CAA, 42 U.S.C. § 7613(b), and 40 C.F.R. § 19.4 (table), K-BIN is liable for a civil penalty of up to \$27,500 per day for violation of the CAA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CAA occurring on and after March 16, 2004.

Claim X - Clean Air Act
K-BIN - Failure to Conduct Follow-up Verification Test

78. Paragraphs 1 through 17 of the Complaint are incorporated herein by reference as if fully set forth herein.

79. Pursuant to 40 C.F.R. § 82.156(i)(3), when repairs have been conducted by the owners and operators of industrial process refrigeration equipment without a process shutdown or system mothballing, an initial verification test shall be conducted at the conclusion of the repair efforts and a follow-up verification test shall be conducted within 30 days after the initial follow-up verification test.

80. Between July 2001 and January 2006, K-BIN failed to perform the follow-up verification test on its leaking industrial process refrigeration equipment on at least six (6) occasions in violation of 40 C.F.R. § 82.156(i)(3).

81. Pursuant to 113(b) of the CAA, 42 U.S.C. § 7613(b), and 40 C.F.R. § 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for violation of the CAA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CAA occurring on and after March 16, 2004.

Claim XI - Clean Air Act
K-BIN - Failure to Develop a Retrofit/Retirement Plan

82. Paragraph 1 through 17 of the Complaint are incorporated herein by reference as if fully set forth herein.

83. Pursuant to 40 C.F.R. § 82.156(i)(6), owners or operators are not required to repair the leaks if within 30 days of discovering the exceedance of the applicable leak rate or within 30 days of a failed follow-up verification test they develop a one-year retrofit or retirement plan for the leaking industrial process refrigeration equipment.

84. Between July 2001 and January 2006, K-BIN failed to develop a retrofit or retirement plan on at least one (1) occasion in violation of 40 C.F.R. § 82.156(i)(6).

85. Pursuant to 113(b) of the CAA, 42 U.S.C. § 7613(b), and 40 C.F.R. § 19.4 (table), K-BIN is liable for a civil penalty of up to \$27,500 per day for each violation of the CAA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CAA occurring on and after March 16, 2004.

Claim XII - Clean Air Act
K-BIN - Failure to Retrofit or Retire Leaking Appliances

86. Paragraph 1 through 17 of the Complaint are incorporated herein by reference as if fully set forth herein.

87. Pursuant to 40 C.F.R. § 82.156(i)(6), owners or operators are not required to repair the leaks if within 30 days of discovering the exceedance of the applicable leak rate or within 30 days of a failed follow-up verification test they develop a one-year retrofit or retirement plan for the leaking appliance. The plan must be dated and all work under the plan must be completed within one year of the plan's date.

88. Between July 2001 and January 2006, K-BIN failed to implement and complete all work under a retrofit or retirement plan to address its industrial process refrigeration equipment that exceeded the applicable leak rate on at least one (1) occasion in violation of 40 C.F.R. § 82.156(i)(6).

89. Pursuant to 113(b) of the CAA, 42 U.S.C. § 7613(b), and 40 C.F.R. § 19.4 (table), K-BIN is liable for a civil penalty of up to \$27,500 per day for violation of the CAA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CAA occurring on and after March 16, 2004.

Claim XIII - Clean Air Act
K-BIN - Failure to Keep Servicing Records

90. Paragraph 1 through 17 of the Complaint are incorporated herein by reference as if fully set forth herein.

91. Pursuant to 40 C.F.R. §§ 82.166(k) and (m), the owners or operators of appliances containing more than 50 pounds of refrigerant must keep servicing records documenting the date and type of service, as well as the quantity of refrigerant added. All records required to be maintained must be kept for a minimum of three years.

92. Between July 2001 and January 2006, K-BIN failed to keep its service records documenting the date and type of service, as well as the quantity of refrigerant added on at least three (3) occasions in violation of 40 C.F.R. §§ 82.166(k) and (m).

93. Pursuant to 113(b) of the CAA, 42 U.S.C. § 7613(b), and 40 C.F.R. § 19.4 (table), K-BIN is liable for a civil penalty of up to \$27,500 per day for each violation of the CAA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CAA occurring on and after March 16, 2004.

Claim XIV - The Resource Conservation and Recovery Act
Shintech - Failure to Make Hazardous Waste Determination

94. Paragraphs 1 through 13 and 18 through 23 of the Complaint are incorporated herein by reference as if fully set forth herein.

95. Within the meaning of 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 260.10, Shintech is a “generator.”

96. Pursuant to 30 TEX.ADMIN.CODE § 335.62 and 40 C.F.R. § 262.11(c), a person who generates a solid waste, as defined in 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 261.2, must determine if the waste is hazardous either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials or the processes used.

97. Between January 2003 and April 2005, Shintech failed to make a hazardous waste determination on at least six (6) occasions in violation of 30 TEX.ADMIN.CODE § 335.62 and 40 C.F.R. §§ 262.11.

98. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6930(g), and 40 C.F.R. § 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the RCRA occurring before March 16, 2004, and up to \$32,500 per day for each violation of the RCRA occurring on and after March 16, 2004.

Claim XV - The Resource Conservation and Recovery Act
Shintech - Disposal, Treatment, and Storage of Hazardous Waste Without a Permit

99. Paragraphs 1 through 13 and 18 through 23 of the Complaint are incorporated herein by reference as if fully set forth herein.

100. Pursuant to the 30 TEX.ADMIN.CODE §§ 335.2 & 335.43 and 40 C.F.R. § 270.1(b), the treatment, storage, or disposal of hazardous waste by any person who has not applied

for or received a RCRA permit is prohibited.

101. Shintech does not have a RCRA permit for its Surface Impoundment II.

102. Shintech does not have a RCRA permit for its Old and New Drying Beds.

103. Shintech disposed, treated, and/or stored hazardous waste in its Surface Impoundment II and Drying Beds for at least ten (10) years prior to the Inspection, in violation of 30 TEX.ADMIN.CODE §§ 335.2 & 335.43 and 40 C.F.R. § 270.1(b).

104. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6930(g), and 40 C.F.R. § 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the RCRA occurring before March 16, 2004, and up to \$32,500 per day for each violation of the RCRA occurring on and after March 16, 2004.

Claim XVI - The Resource Conservation and Recovery Act
Shintech - Failure to Meet Design and Operating Requirements

105. Paragraphs 1 through 13 and 18 through 23 of the Complaint are incorporated herein by reference as if fully set forth herein.

106. Within the meaning of 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 260.10, Shintech's Old Drying Bed is a "pile."

107. Pursuant to 30 TEX.ADMIN.CODE § 335.120 and 40 C.F.R. § 264.251(a)(1), Shintech's waste pile must have a liner that is designed, constructed, and installed to prevent any migration of wastes out of the pile into adjacent subsurface soil or ground water or surface water at any time during the active life (including the closure period) of the waste pile.

108. Shintech operated, for at least ten (10) years prior to the Inspection, a waste pile that was not designed, constructed, and installed to prevent any migration of wastes out of the pile into adjacent subsurface soil or ground water or surface water at any time during its active life in violation

of 30 TEX.ADMIN.CODE § 335.120 and 40 C.F.R. § 264.251(a).

109. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6930(g), and 40 C.F.R. § 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the RCRA occurring before March 16, 2004, and up to \$32,500 per day for each violation of the RCRA occurring on and after March 16, 2004.

Claim XVII - The Resource Conservation and Recovery Act
Shintech - Land Disposal Restrictions Violations

110. Paragraphs 1 through 13 and 18 through 23 of the Complaint are incorporated herein by reference as if fully set forth herein.

111. Pursuant to 30 TEX.ADMIN.CODE § 335.431(c)(1) and 40 C.F.R. § 268.1(c)(4)(iv), a restricted hazardous waste may be land disposed if the waste no longer exhibits a prohibited characteristic at the point of land disposal.

112. Pursuant to 30 TEX.ADMIN.CODE § 335.431(c)(1) and 40 C.F.R. §§ 268.40(a), F003 and F005 are prohibited hazardous waste that cannot be land disposed unless the generator treats the waste in accordance with the treatment standards set forth at 30 TEX.ADMIN.CODE § 335.431(c) (1) 40 C.F.R. § 268.40.

113. Shintech disposed of F003 and F005 listed hazardous waste into its Surface Impoundment II for at least ten (10) years prior to the Inspection, in violation of 30 TEX.ADMIN.CODE § 335.431(c)(1) and 40 C.F.R. § 268.

114. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6930(g), and 40 C.F.R. § 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the RCRA occurring before March 16, 2004, and up to \$32,500 per day for each violation of the RCRA occurring on and after March 16, 2004.

Claim XVIII - The Resource Conservation and Recovery Act
Shintech - Land Disposal Restrictions Violations

115. Paragraphs 1 through 13 and 18 through 23 of the Complaint are incorporated herein by reference as if fully set forth herein.

116. Within the meaning of 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 260.10, Shintech is a “generator.”

117. Pursuant to 30 TEX.ADMIN.CODE § 335.431(c)(1) and 40 C.F.R. § 268.7(a)(2), if a waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether the waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column “268.7(a)(2)” of the Generator Paperwork Requirement Table in 40 C.F.R. § 268.7(a)(4).

118. At the time of the Inspection, Shintech did not send to the treatment or storage facility a one-time written notice that Defendant’s waste did not meet the treatment standards in violation of 30 TEX.ADMIN.CODE § 335.431(c)(1) and 40 C.F.R. § 268.7(a)(2).

119. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6930(g), and 40 C.F.R. § 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the RCRA occurring before March 16, 2004, and up to \$32,500 per day for each violation of the RCRA occurring on and after March 16, 2004.

Claim IXX - The Resource Conservation and Recovery Act
Shintech - Generator Requirements

120. Paragraphs 1 through 13 and 18 through 23 of the Complaint are incorporated

herein by reference as if fully set forth herein.

121. Within the meaning of 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 260.10, Shintech is a “generator.”

122. Pursuant to 30 TEX.ADMIN.CODE § 335.63(b) and 40 C.F.R. § 262.12(c), a generator must not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

123. Shintech has offered, for at least two (2) years prior to the Inspection, its hazardous waste to a transporter, or to a treatment, storage, or disposal facility that does not have an EPA identification number in violation of 30 TEX.ADMIN.CODE § 335.63(b) and 40 C.F.R. § 262.12(c).

124. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6930(g), and 40 C.F.R. § 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the RCRA occurring before March 16, 2004, and up to \$32,500 per day for each violation of the RCRA occurring on and after March 16, 2004.

Claim XX - The Resource Conservation and Recovery Act
Shintech - Financial Requirements

125. Paragraphs 1 through 13 and 18 through 23 of the Complaint are incorporated herein by reference as if fully set forth herein.

126. Within the meaning of 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 260.10, Shintech is the owner and operator of a “facility.”

127. Pursuant to 30 TEX.ADMIN.CODE § 335.179 and 40 C.F.R. §§ 264.143 and 265.143, the owner and operator of each facility must establish financial assurance for closure of the facility. The owner or operator must choose from the options set forth in 30 TEX.ADMIN.CODE § 335.179 and 40 C.F.R. §§ 264.143 and 265.143(a) through (f).

128. Shintech does not have financial assurance for the closure of its facility in violation of 30 TEX.ADMIN.CODE § 335.179 and 40 C.F.R. §§ 264.143.

129. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6930(g), and 40 C.F.R. § 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the RCRA occurring before March 16, 2004, and up to \$32,500 per day for each violation of the RCRA occurring on and after March 16, 2004.

Claim XXI - The Resource Conservation and Recovery Act
Shintech - Closure and Post Closure Requirements

130. Paragraphs 1 through 13 and 18 through 23 of the Complaint are incorporated herein by reference as if fully set forth herein.

131. Within the meaning of 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 260.10, Shintech is the owner and operator of a “facility.”

132. Pursuant to 30 TEX.ADMIN.CODE § 335.123, 40 C.F.R. §§ 264.112 & 264.118, and 40 C.F.R. §§ 265.112 & 265.118, the owner and operator of a hazardous waste management facility is required to have a written closure plan and a written post closure plan, respectively. The plans must be submitted with the permit application and be approved by the Regional Administrator as part of the permit issuance procedure.

133. Shintech does not have a written closure plan or a post-closure plan for its “surface impoundments” and its “waste piles” in violation of 30 TEX.ADMIN.CODE § 335.123 and 40 C.F.R. §§ 264.112 & 264.118 and 265.112 & 265.118.

134. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6930(g), and 40 C.F.R. § 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the RCRA occurring before March 16, 2004, and up to \$32,500 per day for each violation of the RCRA

occurring on and after March 16, 2004.

Claim XXII - The Resource Conservation and Recovery Act
Shintech - Notification Requirements

135. Paragraphs 1 through 13 and 18 through 23 of the Complaint are incorporated herein by reference as if fully set forth herein.

136. Within the meaning of 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 260.10, Shintech is a “generator.”

137. Pursuant to Section 6930(a) of RCRA, 42 U.S.C. § 3010(a), any person generating a characteristic or listed hazardous waste shall file with the Administrator or authorized State a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person.

138. At the time of the Inspection, Shintech did not file with the Administrator or with the authorized State a notification of hazardous waste activities in violation of Section 6930(a) of RCRA, 42 U.S.C. § 3010(a).

139. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6930(g), and 40 C.F.R. § 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the RCRA occurring before March 16, 2004, and up to \$32,500 per day for each violation of the RCRA occurring on and after March 16, 2004.

Claim XXIII - Clean Water Act
Shintech - Operating Without a Permit

140. Paragraphs 1 through 13 and 24 through 36 of the Complaint are incorporated herein by reference as if fully set forth herein.

141. Section 301(a) of the CWA, 33 U.S.C. § 1311(a) prohibits the “discharge of

pollutants” except in compliance with certain Sections of the CWA, including Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342.

142. Between July 1, 1999 and July 19, 2007, Shintech discharged pollutants from a point source to waters of the United States without an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

143. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the CWA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CWA occurring on and after March 16, 2004.

Claim XXIV - Clean Water Act
Shintech – Discharge of Storm Water Without a Permit

144. Paragraphs 1 through 13 and 23 through 36 of the Complaint are incorporated herein by reference as if fully set forth herein.

145. During the Inspection, Shintech conducted construction activities that disturbed approximately three (3) acres of total land area and that were “small construction activities” within the meaning of 40 C.F.R. § 22.26(b)(15).

146. Shintech discharged of storm water associated with small construction activities within the meaning of 40 C.F.R. § 122.26(b)(15).

147. Shintech failed to apply for a permit for the storm water discharge associated with its small construction activity as required by 40 C.F.R. § 122.26(c).

148. Shintech discharged “pollutants” from a “point source” into “waters of the United States” in violation of Section 301 of the CWA, 33 U.S.C. § 311, and 40 C.F.R. §122.1 and 122.26.

149. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4

(table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the CWA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CWA occurring on and after March 16, 2004.

Claim XXV - The Emergency Planning and Community Right-To-Know Act
Shintech - Failure to Timely Submit Form Rs

150. Paragraphs 1 through 13 and 37 through 41 of the Complaint are incorporated herein by reference as if fully set forth herein.

151. The chemical substance chlorine is a “toxic chemical” as defined by 40 C.F.R. § 372.3 and is listed in 40 C.F.R. § 372.65.

152. The Shintech operates a “facility” within the meaning of Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. §§ 355.20 and 372.3, and a “covered facility” within the meaning of 40 C.F.R. § 372.22.

153. The threshold quantity for a toxic chemical, which is otherwise used at a facility, is 10,000 pounds for the 2001, 2002, and 2003 calendar years as set forth in Section 313(f)(1)(A) of EPCRA, 42 U.S.C. § 11023(f)(1)(A), and 40 C.F.R. § 372.25(b).

154. The Shintech Freeport facility used more than 10 million pounds of chlorine during the calendar years 2001, 2002, and 2003.

155. Pursuant to 40 C.F.R. § 372.30(a), Shintech was required to submit to EPA and to the TCEQ a complete Form R (EPA Form 9350-1) in accordance with the instructions in 40 C.F.R. Part 372, Subpart E.

156. Shintech failed to submit its Form Rs for the calendar years 2001, 2002, and 2003 in violation of 40 C.F.R. § 372.30(a) and 40 C.F.R. Part 372, Subpart E.

157. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and 40 C.F.R.

§ 19.4 (table), Shintech is liable for a civil penalty of up to \$27,500 per day for each violation of the EPCRA occurring after January 30, 1997 and before March 16, 2004.

PRAYER FOR RELIEF

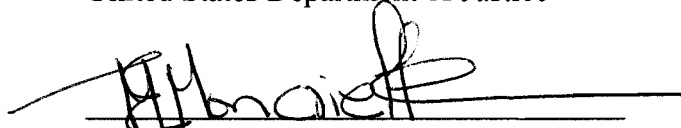
WHEREFORE, Plaintiff, the UNITED STATES of AMERICA, respectfully requests that this Court grant the following relief:

1. For a civil penalty for each violation of the Acts and regulations promulgated thereunder as alleged in this Complaint;
2. For cost and disbursements incurred in this action; and
3. For such relief that this Court deems just and proper.

Respectfully Submitted,



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Assistant Attorney General
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United States Department of Justice



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CERTIFICATE OF SERVICE

Pursuant to Paragraph 118 of the Consent Decree that will be lodged in this action, Defendants agreed to accept service of process by mail with respect to all matters arising under or relating to the Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

I hereby certify that on November 26, 2008, a copy of the foregoing Complaint was sent by first class mail, postage prepaid, on the following individual who represents the parties to the Consent Decree:

W. David Tidholm
Attorney for Defendants
Porter & Hedges LLP
1000 Main Street, 36th Fl.
Houston, Texas 77002

D.

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U.S. v. SHINTECH INCORPORATED and K-BIN INC.